

**NOTICE OF INTENDED REGULATORY ACTION**  
**WATER QUALITY STANDARDS AMENDMENTS – LAKE NUTRIENT CRITERIA**  
**ISSUED: February 21, 2005**  
**COMMENT PERIOD CLOSES: April 8, 2005 at 5:00 PM**

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: 9 VAC 25-260 Water Quality Standards.

**PURPOSE:** The subject matter of the rulemaking will include new numerical and narrative criteria to protect designated uses of lakes and reservoirs from the impacts of nutrients. The rulemaking may also include new and/or revised use designations for certain categories of lakes and reservoirs.

**STATUTORY AUTHORITY:**

State: Sections 62.1-44.15(10) and 62.1-44.15(3a) of the Code of Virginia  
Federal: Clean Water Act (33 USC 1251 et seq.) 40 Code of Federal Regulations 131

**INTENT:** The intent of this rulemaking is to protect state waters by adopting regulations that are technically correct, necessary and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act 305(b) report and on the 303(d) list. Waters not meeting standards will require development of a Total Maximum Daily Load (TMDL) under section 303(d) of the Clean Water Act.

**NEED:** This rulemaking is needed to establish the appropriate criteria for lakes and reservoirs in the Commonwealth of Virginia because:

1. The U.S. Environmental Protection Agency (EPA) has published ecoregion water body specific nutrient related criteria guidance and stated its intent in a National Nutrient Strategy (1998) to promulgate nutrient criteria for a state if the state does not adopt nutrient criteria by December 31, 2004 or submit a nutrient development plan with timelines for adoption of nutrient criteria that are accepted by EPA, and
2. Adoption of water body type specific criteria and uses is necessary to define the most accurate water quality goals for clean up or TMDL development and to protect the appropriate aquatic life and recreational uses of lakes and reservoirs.

**SUBSTANCE:** The proposed regulatory action will constitute an amendment of existing regulatory provisions. Criteria will be proposed to protect the uses of lakes and reservoirs from the effects of nutrient enrichment.

**ALTERNATIVES:** Some alternatives considered by the agency include, but are not limited to, the following:

- Whether nutrient criteria should be adopted for lakes and reservoirs.
- Whether the EPA published 304(a) criteria guidance for lakes and reservoirs for ecoregions IX, XI, and XIV for causal (total phosphorus and total nitrogen) and response (chlorophyll a and water clarity) variables are appropriate for Virginia lakes and reservoirs or should some other approach be taken to control nutrients in lakes and reservoirs such as effects based criteria (the effects based criteria approach is favored).

Department of Environmental Quality (DEQ) staff will work in conjunction with other Commonwealth of Virginia and federal agencies, the Academic Advisory Committee (AAC), a stakeholder workgroup, and neighboring states to find other alternatives. Alternatives provided by the public will also be considered.

**PUBLIC PARTICIPATION:** The Board is seeking comments on the intended regulatory action, including (i) ideas to assist in the development of a proposal, (ii) the costs and benefits of the alternatives stated in this notice or other alternatives and (iii) impacts of the regulation on farm or forest lands.

The Board also seeks comment from the public on any aspects of technical support documentation for this rulemaking provided by the EPA and AAC that should or should not relate to the Commonwealth of Virginia or should be modified in some way to better protect water quality in the Commonwealth. All of the EPA documents can be found at <http://www.epa.gov/waterscience/standards/nutrient.html>. All of the AAC documents and the EPA accepted DEQ "Plan for Nutrient Criteria Development" can be found at <http://www.deq.state.va.us/wqs/rule.html#NUT2>.

The Board is also seeking comment on ad hoc advisory committee membership. Names of individuals or organizations for the ad hoc committee should be submitted to the contact person below by March 21, 2005.

Anyone wishing to submit written comments for the public comment file may do so at the public meetings, by mail, by fax or by e-mail to Jean Gregory at the address given below. Written comments (including e-mail) must include the name and address of the commenter. Public comment may be submitted until 5:00 PM on April 8, 2005. In order to be considered, comments must be received between February 21, 2005 and April 8, 2005.

Public meetings will be held on Thursday, March 31, 2005 at 2:00 PM, Department of Environmental Quality Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA ; Tuesday, April 5, 2005 at 1:30 PM, Department of Environmental Quality West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA; Thursday, April 7, 2005 at 1:30 PM, Department of Environmental Quality Northern Regional Office, 13901 Crown Court, Woodbridge, VA . Both oral and written comments may be submitted at those times

The meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Jean Gregory at the address or telephone number given below. Persons needing interpreter services for the deaf must notify Jean Gregory by March 14, 2005.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register. This has not been scheduled yet.

**PARTICIPATORY APPROACH:** The Board is using the participatory approach in the development of a proposal. This will involve the formation of an ad hoc advisory committee to assist in the development of the proposal.

**CONTACT:** Jean W. Gregory, VA Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone: (804) 698-4113 or 1-800-592-5482 or TDD (804) 698-4261, fax: 804-698-4522, or e-mail: [jwggregory@deq.virginia.gov](mailto:jwggregory@deq.virginia.gov).